

Before the
Administrative Hearing Commission
State of Missouri



LORENZO C. SMITH,

Petitioner,

vs.

MISSOURI REAL ESTATE COMMISSION,

Respondent.

No. 13-1426 RE

DECISION

Petitioner Lorenzo C. Smith lacks standing to bring this action, and we therefore dismiss.

Procedure

Mr. Smith filed his complaint on August 8, 2013. Respondent Missouri Real Estate Commission filed a renewed motion to dismiss for lack of jurisdiction on September 24, 2013. We granted Mr. Smith until October 7, 2013 to file a response, but he filed nothing.

We may grant a motion for involuntary dismissal, or dismiss a complaint on our own motion, based on a preponderance of admissible evidence. 1 CSR 15-3.436(1) and (3).¹ Admissible evidence includes allegations made in the complaint, stipulations, and affidavits. 1 CSR 15-3.436(3). When a motion for involuntary dismissal relies on affidavits, we must treat

¹ References to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

it as a motion for summary decision, or convene a hearing. Here, because the motion relies on an affidavit, we treat it as a motion for summary decision. A hearing is not necessary.

The findings of fact below are taken from Mr. Smith's complaint and the affidavit.

Findings of Fact

1. Lorenzo C. Smith holds a real estate broker associate license, issued by the Missouri Real Estate Commission (the MREC).

2. Mr. Smith and the MREC have engaged in settlement negotiations concerning possible discipline of Mr. Smith's license, in light of his plea of guilty to conspiracy to distribute a controlled substance, and alleged provision of false answers in a filing with the MREC. Those negotiations are ongoing as of September 23, 2013.

3. Mr. Smith appealed to this Commission on August 8, 2013.

4. The MREC has not denied Mr. Smith a license, nor has his license been revoked, nor has the MREC filed a complaint against Mr. Smith with this Commission, seeking to suspend or revoke his license, or to place him on probation.

Conclusions of Law

In Mr. Smith's complaint filed herein, he refers to the parties' settlement negotiations, asks to maintain his license during a probationary period, and asks for a hearing before this Commission. The MREC moved to dismiss, arguing that the statutory procedure for review of a disciplinary proceeding permits only the MREC to file a complaint. We dismiss.

This Commission is a creature of statute and can exercise only those powers conferred by law, not expand them. *Livingston Manor, Inc. v. Dep't of Soc. Servs., Div. of Family Servs.*, 809 S.W.2d 153, 156 (Mo. App. W.D. 1991). In the case of a real estate broker associate license holder, the law provides a specific process for review when the MREC seeks to suspend or revoke a license, or place the licensee on probation:

The [MREC] may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the...acts [elsewhere set out].

§ 339.100.2, RSMo (Supp. 2012) (emphasis added). This Commission then decides whether there is cause for discipline, and if we find there is, the MREC decides what discipline to impose.

§ 339.100.3. There is an exception to the § 339.100.2 filing procedure. A licensee whose license has been revoked for violation of certain state or federal laws (crimes including any dangerous felony, sex offenses, offenses against the family, and child pornography) may himself appeal to this Commission. § 339.100.5 and .6.

Additionally, we note that a non-license holder, that is, an applicant who has been denied a license or the right to be examined, may also appeal to this Commission himself. § 339.080.2, RSMo (Supp. 2012).

Mr. Smith lacks standing to file an appeal with this Commission himself. Standing, in its most basic form, “asks whether the persons seeking relief have a right to do so.” *In re Ancillary Adversary Proceeding Questions*, 89 S.W.3d 460, 464 (Mo. banc 2002). Mr. Smith has no such right. Mr. Smith is a licensee. The MREC has not denied him a license, nor has his license been revoked for commission of an offense specified in § 339.100.5.² Therefore, the appeal procedures under § 339.080.2 and § 339.100.5 do not apply.

The potentially applicable procedure, under § 339.100.2, provides only the MREC with the authority to file, should it choose to pursue suspension, revocation, or probation. Here, the MREC has not chosen to do so at this time. In any event, neither § 339.100.2, nor any other

² The offense the MREC identified as the one Mr. Smith committed, conspiracy to distribute a controlled substance, does not appear to be one of the offenses specified in § 339.100.5.

statutory provision, gives Mr. Smith the right to seek relief under the circumstances presented here.

Conclusion

The complaint is dismissed.

The hearing presently scheduled for December 4, 2013 is canceled.

SO ORDERED on October 10, 2013.

\s\ Alana M. Barragán-Scott
ALANA M. BARRAGÁN-SCOTT
Commissioner